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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,577	09/22/2005	Sylvie Pridmore-Merten	3712036.00597	3814

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EXAMINER	
CLARK, AMY LYNN	
ART UNIT	PAPER NUMBER
1655	

NOTIFICATION DATE	DELIVERY MODE
03/24/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No.	Applicant(s)	
	10/526,577	PRIDMORE-MERTEN ET AL.	
	Examiner	Art Unit	
	Amy L. Clark	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 June 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-7 and 22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-7 and 22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on 12/27/2010 with the cancellation of claims 2 and 17, and amended claim 1.

Any rejection found in the previous Office Action and not repeated herein has been withdrawn based upon Applicant's amendments to the claims.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-7 and 22 are currently under examination.

Claim Rejections - 35 USC § 112

Claims 1, 4-7 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention (newly applied as necessitated by amendment).

The metes and bounds of claim 1 are rendered uncertain by the phrase "an ingredient comprising an admixture of L-carnitine, one of gingko biloba and an antioxidant blend...and a molecule that stimulates energy metabolism of a cell" because it is unclear if Applicants are claiming that all of the ingredients are part of the admixture, of L-carnitine is an admixture, if the admixture comprises L- carnitine, either

gingko biloba or an antioxidant blend or a molecule, or of the admixture comprises L-carnitine, a molecule and either gingko biloba or an antioxidant blend. The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-7 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Malnoe et al. (C, US PreGrant Publication: 2004/0047896 A1, Priority date: March 9, 2001) (newly applied as necessitated by amendment).

Malnoe teaches a food composition for oral administration comprising a molecule that stimulates energy metabolism of the mitochondria, wherein the molecule comprises carnitine, cardiolipin and nicotinamide, an antioxidant, ginkgo biloba extracts, cysteine, grape or grapeseed extracts rich in proanthocyanidins, vitamin C, vitamin E, tea catechins, S-adenosyl-methionine, coffee extracts containing polyphenols and diterpenes, spice extracts, soy extracts containing isoflavones and related phytoestrogens and other sources of flavonoids with antioxidant activity,

ursodeoxycholic acid, ursolic acid, ginseng, ginsengosides and their natural sources (See paragraphs 0021-0027). Malnoe further teaches that the composition can be mixted with a carbohydrate source, wherein the carbohydrate source is grain, flour or starch, a protein and/or a fat or oil, wherein the oil can be a vegetable oil (See paragraphs 0030-0033)(which reads on a pharmaceutically acceptable carrier) Malnoe further teaches that the composition improves skin and coat quality of an animal (See paragraph 0062) and that the composition can be a pharmaceutical composition, a pet food and a dietary supplement (See paragraph 0029).

Although Malnoe does not expressly teach that the composition stimulates hair growth or modulates hair sebum liquid production and/or composition, the claimed functional properties are inherent to the preparation taught by Malnoe because the ingredients, the amounts of the ingredients, and the route of administration for the delivery of the ingredients taught by Malnoe are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, the composition comprising carnitine, cardiolipin and nicotinamide, an antioxidant, ginkgo biloba extracts, cysteine, grape or grapeseed extracts rich in proanthocyanidins, vitamin C, vitamin E, tea catechins, S-adenosyl-methionine, a compound that upregulates the biosynthesis of S-adenosyl-methionine or cysteine in vivo, coffee extracts containing polyphenols and diterpenes, spice extracts, soy extracts containing isoflavones and related phytoestrogens and other sources of flavonoids with antioxidant activity, ursodeoxycholic acid, ursolic acid, ginseng, ginsengosides and their natural sources taught by Malnoe would inherently stimulate hair growth and modulate hair sebum liquid production and/or composition.

Therefore, the reference anticipates the instantly claimed subject matter.

Claim Rejections - 35 USC § 103

Claims 1, 4-7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breitenbach et al. (D, US 6120802 A) (newly applied as necessitated by amendment).

Breiteinbach teaches a composition for oral administration to administer active ingredients in the form of a pharmaceutical comprising vitamin C, Vitamin E, niconiamide, charnitine, ginkgo biloba, vegetable fats (which reads on an orally acceptable carrier) and compounds that upregulate the biosynthesis of S-adenosyl-methionine or cysteine in vivo.

Although Breiteinbach does not expressly teach that the composition improves hair or coat quality of an animal, stimulates hair growth or modulates hair sebum liquid production and/or composition, the claimed functional properties are intrinsic to the preparation taught by Breiteinbach because the ingredients, the amounts of the ingredients, and the route of administration for the delivery of the ingredients taught by Breiteinbach are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, the composition taught by Breiteinbach would intrinsically improvehair or coat quality of an animal, stimulate hair growth and modulate hair sebum liquid production and/or composition.

It would have been obvious to modify the composition taught by Breiteinbach by combining vitamin C, Vitamin E, niconiamide, charnitine, ginkgo biloba, vegetable fats

and compounds that upregulate the biosynthesis of S-adenosyl-methionine or cysteine in vivo because at the time the invention was made, it was known that vitamin C, Vitamin E, niconiamide, charnitine, ginkgo biloba, vegetable fats (which reads on) and compounds that upregulate the biosynthesis of S-adenosyl-methionine or cysteine in vivo were all useful ingredients that could be administered orally and could be combined to administer these active ingredients to a subject in need thereof as clearly taught by Breiteinbach.

It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. Based on the disclosure by Breiteinbach that vitamin C, Vitamin E, niconiamide, charnitine, ginkgo biloba, vegetable fats and compounds that upregulate the biosynthesis of S-adenosyl-methionine or cysteine in vivo are ingredients that could be combined and could be orally administered, the artisan would have been motivated to combine the claimed ingredients into a single composition. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See MPEP section 2144.06, In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980), Ex parte Quadranti, 25 USPQ2d 1071 (Bd. Pat. App. & Inter. 1992).

Thus, an artisan of ordinary skill would reasonably expect that combining vitamin C, Vitamin E, niconiamide, charnitine, ginkgo biloba, vegetable fats and compounds that

upregulate the biosynthesis of S-adenosyl-methionine or cysteine in vivo would provide an even more effective delivery system. This reasonable expectation of success would motivate the artisan to use vitamin C, Vitamin E, niconiamide, charnitine, ginkgo biloba, vegetable fats and compounds that upregulate the biosynthesis of S-adenosyl-methionine or cysteine in vivo in a delivery system formulation for administering active ingredients based upon the teachings of Breiteinback.

Based upon the beneficial teachings of the cited references, the skill of one of ordinary skill in the art, and absent evidence to the contrary, there would have been a reasonable expectation of success to result in the claimed invention.

Accordingly, the claimed invention was prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Response to Arguments

Applicant's arguments with respect to claims 1, 4-7 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571)272-1310. The examiner can normally be reached on Monday to Friday between 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy L Clark/
Primary Examiner, Art Unit 1655